

AMENDED IN ASSEMBLY MAY 31, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1778**

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**Introduced by Assembly Member Quirk**

February 3, 2016

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An act to amend Section 67386 of the Education Code, relating to student safety.

LEGISLATIVE COUNSEL’S DIGEST

AB 1778, as amended, Quirk. Postsecondary education: sexual assault and sexual violence training.

Existing law requires the governing boards of each community college district, the Trustees of the California State University, the Regents of the University of California, and the governing boards of independent postsecondary institutions, in order to receive state funds for student financial assistance, to adopt detailed and victim-centered policies and protocols regarding sexual assault, domestic violence, dating violence, and stalking involving a student that comport with best practices and current professional standards, covering specified topics, including a comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases.

This bill ~~would~~ *would, commencing January 1, 2018*, require those institutions, in order to receive state funds for student financial assistance, to conduct annual training of their respective employees, in addition to the training described above, on the employee’s obligations in responding to and reporting incidents of sexual assault, domestic violence, dating violence, and stalking involving students. *The bill would provide that an employee trained pursuant to these provisions*

*is deemed to have satisfied the annual training requirement for each campus or community college district, as applicable, within each segment that the employee is employed at for that year.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 67386 of the Education Code is amended  
2 to read:

3 67386. (a) In order to receive state funds for student financial  
4 assistance, the governing board of each community college district,  
5 the Trustees of the California State University, the Regents of the  
6 University of California, and the governing boards of independent  
7 postsecondary institutions shall adopt a policy concerning sexual  
8 assault, domestic violence, dating violence, and stalking, as defined  
9 in the federal Higher Education Act of 1965 (20 U.S.C. Sec.  
10 1092(f)), involving a student, both on and off campus. The policy  
11 shall include all of the following:

12 (1) An affirmative consent standard in the determination of  
13 whether consent was given by both parties to sexual activity.  
14 “Affirmative consent” means affirmative, conscious, and voluntary  
15 agreement to engage in sexual activity. It is the responsibility of  
16 each person involved in the sexual activity to ensure that he or she  
17 has the affirmative consent of the other or others to engage in the  
18 sexual activity. Lack of protest or resistance does not mean consent,  
19 nor does silence mean consent. Affirmative consent must be  
20 ongoing throughout a sexual activity and can be revoked at any  
21 time. The existence of a dating relationship between the persons  
22 involved, or the fact of past sexual relations between them, should  
23 never by itself be assumed to be an indicator of consent.

24 (2) A policy that, in the evaluation of complaints in any  
25 disciplinary process, it shall not be a valid excuse to alleged lack  
26 of affirmative consent that the accused believed that the  
27 complainant consented to the sexual activity under either of the  
28 following circumstances:

29 (A) The accused’s belief in affirmative consent arose from the  
30 intoxication or recklessness of the accused.

1 (B) The accused did not take reasonable steps, in the  
2 circumstances known to the accused at the time, to ascertain  
3 whether the complainant affirmatively consented.

4 (3) A policy that the standard used in determining whether the  
5 elements of the complaint against the accused have been  
6 demonstrated is the preponderance of the evidence.

7 (4) A policy that, in the evaluation of complaints in the  
8 disciplinary process, it shall not be a valid excuse that the accused  
9 believed that the complainant affirmatively consented to the sexual  
10 activity if the accused knew or reasonably should have known that  
11 the complainant was unable to consent to the sexual activity under  
12 any of the following circumstances:

13 (A) The complainant was asleep or unconscious.

14 (B) The complainant was incapacitated due to the influence of  
15 drugs, alcohol, or medication, so that the complainant could not  
16 understand the fact, nature, or extent of the sexual activity.

17 (C) The complainant was unable to communicate due to a mental  
18 or physical condition.

19 (b) In order to receive state funds for student financial assistance,  
20 the governing board of each community college district, the  
21 Trustees of the California State University, the Regents of the  
22 University of California, and the governing boards of independent  
23 postsecondary institutions shall adopt detailed and victim-centered  
24 policies and protocols regarding sexual assault, domestic violence,  
25 dating violence, and stalking involving a student that comport with  
26 best practices and current professional standards. At a minimum,  
27 the policies and protocols shall cover all of the following:

28 (1) A policy statement on how the institution will provide  
29 appropriate protections for the privacy of individuals involved,  
30 including confidentiality.

31 (2) Initial response by the institution's personnel to a report of  
32 an incident, including requirements specific to assisting the victim,  
33 providing information in writing about the importance of preserving  
34 evidence, and the identification and location of witnesses.

35 (3) Response to stranger and nonstranger sexual assault.

36 (4) The preliminary victim interview, including the development  
37 of a victim interview protocol, and a comprehensive followup  
38 victim interview, as appropriate.

39 (5) Contacting and interviewing the accused.

40 (6) Seeking the identification and location of witnesses.

1 (7) Providing written notification to the victim about the  
2 availability of, and contact information for, on- and off-campus  
3 resources and services, and coordination with law enforcement,  
4 as appropriate.

5 (8) Participation of victim advocates and other supporting  
6 people.

7 (9) Investigating allegations that alcohol or drugs were involved  
8 in the incident.

9 (10) Providing that an individual who participates as a  
10 complainant or witness in an investigation of sexual assault,  
11 domestic violence, dating violence, or stalking will not be subject  
12 to disciplinary sanctions for a violation of the institution's student  
13 conduct policy at or near the time of the incident, unless the  
14 institution determines that the violation was egregious, including,  
15 but not limited to, an action that places the health or safety of any  
16 other person at risk or involves plagiarism, cheating, or academic  
17 dishonesty.

18 (11) The role of the institutional staff supervision.

19 (12) A comprehensive, trauma-informed training program for  
20 campus officials involved in investigating and adjudicating sexual  
21 assault, domestic violence, dating violence, and stalking cases.

22 (13) Procedures for confidential reporting by victims and third  
23 parties.

24 (c) In order to receive state funds for student financial assistance,  
25 the governing board of each community college district, the  
26 Trustees of the California State University, the Regents of the  
27 University of California, and the governing boards of independent  
28 postsecondary institutions shall, to the extent feasible, enter into  
29 memoranda of understanding, agreements, or collaborative  
30 partnerships with existing on-campus and community-based  
31 organizations, including rape crisis centers, to refer students for  
32 assistance or make services available to students, including  
33 counseling, health, mental health, victim advocacy, and legal  
34 assistance, and including resources for the accused.

35 (d) In order to receive state funds for student financial assistance,  
36 the governing board of each community college district, the  
37 Trustees of the California State University, the Regents of the  
38 University of California, and the governing boards of independent  
39 postsecondary institutions shall implement comprehensive  
40 prevention and outreach programs addressing sexual violence,

1 domestic violence, dating violence, and stalking. A comprehensive  
2 prevention program shall include a range of prevention strategies,  
3 including, but not limited to, empowerment programming for  
4 victim prevention, awareness raising campaigns, primary  
5 prevention, bystander intervention, and risk reduction. Outreach  
6 programs shall be provided to make students aware of the  
7 institution's policy on sexual assault, domestic violence, dating  
8 violence, and stalking. At a minimum, an outreach program shall  
9 include a process for contacting and informing the student body,  
10 campus organizations, athletic programs, and student groups about  
11 the institution's overall sexual assault policy, the practical  
12 implications of an affirmative consent standard, and the rights and  
13 responsibilities of students under the policy.

14 (e) ~~In~~(1) *Commencing January 1, 2018*, in order to receive  
15 state funds for student financial assistance, the governing board  
16 of each community college district, the Trustees of the California  
17 State University, the Regents of the University of California, and  
18 the governing boards of independent postsecondary institutions  
19 shall conduct annual training of their respective employees, in  
20 addition to the training required by paragraph (12) of subdivision  
21 (b), on the employee's obligations in responding to and reporting  
22 incidents of sexual assault, domestic violence, dating violence,  
23 and stalking involving students.

24 (2) *An employee trained pursuant to this subdivision shall be*  
25 *deemed to have satisfied the annual training requirement for each*  
26 *campus or community college district, as applicable, within each*  
27 *segment that the employee is employed at for that year.*

28 (f) Outreach programming shall be included as part of every  
29 incoming student's orientation.